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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,707	02/05/2002	Alain Houle	CISCP730	1909
54406	7590	11/22/2006	EXAMINER	
AKA CHAN LLP / CISCO 900 LAFAYETTE STREET SUITE 710 SANTA CLARA, CA 95050			KIM, DAVID S	
			ART UNIT	PAPER NUMBER
			2613	

DATE MAILED: 11/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

sk

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No. 10/072,707		Applicant(s) HOULE ET AL.	
Examiner David S. Kim		Art Unit 2613	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 1, 5-7, 9, 13, 14, 16, 20-25, 27 and 31-33.  
Claim(s) withdrawn from consideration: none.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

  
**KENNETH VANDERPUYE  
SUPERVISORY PATENT EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed on 10 November 2006 have been fully considered, but they are not persuasive. Applicant presents three salient points.

Regarding the first point, Applicant states:

"[T]he argument is that the applicants' claimed invention is obvious because it is obvious. With due respect to the Examiner, this argument is a tautology and is not a reason" (p. 8, last full paragraph).

Examiner respectfully disagrees with Applicant's characterization of the standing rejection. That is, consider the following:

(1) The prior art teachings of Swanson:

- an explicit example of upgrading one channel (Fig. 3, col. 8, l. 2-9)
- suggestion of additional examples of upgrading one channel (general formula that applies to a variety of data rates and upgrade situations in col. 7, l. 66 - col. 8, l. 2; variety of codes for channel upgrading in col. 7, l. 1-57)
- explicit suggestion of upgrading multiple channels (col. 6, l. 8)

(2) The scenario presented in the standing rejection:

"That is, consider a system that already has an upgraded channel according to Swanson's upgrading teachings, e.g., a system, similar to Fig. 3, with a channel that has been upgraded by a factor of 4, similar to col. 8, l. 2-9. If one desires to further upgrade another channel to increase channel capacity, e.g., by a factor of 16, one would simply apply Swanson's upgrading teachings to a channel that has not been upgraded" (Office Action mailed on 10 July 2006, p. 6, 2<sup>nd</sup> full paragraph).

(3) This scenario, along with many other scenarios, falls within the scope of the prior art teachings/suggestions of Swanson.

As Applicant's limitation (e.g., claim 1, "applying error correction coding to multiple data signals such that said one data signal experiences a greater coding gain than another data signal") fits this scenario, it follows that Applicant's limitation also falls within the scope of the prior art teachings of Swanson.

(4) The motivation:

"The motivation would be the common improvement of increased transmission capacity (col. 6, l. 8), which is an explicit purpose of Swanson's teachings (col. 3, l. 3-7)" (Office Action mailed on 10 July 2006, p. 6, 2<sup>nd</sup> full paragraph).

Notice that portions (1), (2), and (3) are all taught or suggested by Swanson. The motivation (4) is separate from (1), (2), and (3). Therefore, the standing rejections show that Applicant's claimed invention is obvious because Applicant's claimed invention (3) falls within the scope of Swanson's suggestions (1) and (2). The obviousness argument is completed by the motivation (4), which is separate from (1), (2), and (3). Accordingly, Applicant's first point is not persuasive.

Regarding the second point, Applicant states:

"In the present case, the Examiner argues that motivation provides the prior art teaching for an obviousness rejection" (p. 9, 1<sup>st</sup> paragraph).

Again, Examiner respectfully disagrees. Examiner's treatment of Applicant's first point shows that the motivation (4) is separate from the prior art teaching/suggesting portions of Swanson (1), (2), and (3). Accordingly, Applicant's second point is not persuasive.

Regarding the third point, Applicant states:

"Thirdly, if one applied the same basic principles of Swanson's one channel example in Fig. 3, as the Examiner suggests, one would obtain two or more channels with the same FEC coder 40 (and same FEC decoder 42). This is not what is claimed in claim 1. Only by modifying a straightforward application of the same basic principles of Swanson's one-channel example in Fig. 3 to other channels, as guided by the applicants' teachings, does the Examiner reach the applicants' claims. The applicants' claimed invention is reached through impermissible hindsight" (p. 9, 1<sup>st</sup> full paragraph).

Examiner respectfully disagrees. Although Applicant's counterexample of employing the same FEC coder 40 and the same FEC decoder 42 is one possible way to apply the basic principles of Swanson's one-channel example, it is not the only possible way to do so. That is, notice in portion (1) that Swanson suggests additional examples of upgrading one channel through a general formula that applies to a variety of data rates and upgrade situations in col. 7, l. 66 - col. 8, l. 2 and through a variety of codes for channel upgrading in col. 7, l. 1-57). Thus, Swanson teaches a variety of ways to apply the basic principles of its one-channel example. As stated above, the scenario (2) presented in the standing rejection falls within the scope of the teachings/suggestions of Swanson (3). Therefore, Applicant's counterexample is not the only way to apply the basic principles of Swanson's one-channel example. Rather, Applicant's claimed invention is just one of many ways to apply the basic principles of Swanson's one-channel example to multiple channels.

Summarily, Applicant's arguments are not persuasive. Accordingly, Examiner respectfully maintains the standing rejections.

Continuation of 13. Other:

35 USC 112

Applicant's response to the previous rejection of claims 2-4, 10-12, 18-19, and 28-30 (mailed on 10 July 2006) is noted and appreciated. Applicant responded by canceling these claims. Accordingly, this previous rejection is moot and withdrawn.